

AMENDED IN ASSEMBLY APRIL 10, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 1624

Introduced by Assembly Member Niello

February 23, 2007

An act to amend ~~Section 3600.5 of the Labor Code~~ *Sections 21175 and 21192 of, and to add Section 21431 to, the Government Code, to amend Sections 3762 and 4658.6 of the Labor Code, and to amend Section 1543 of the Penal Code, relating to workers' compensation public employees.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1624, as amended, Niello. ~~Workers' compensation: coverage. Public employees: retirement: workers' compensation.~~

(1) *The Public Employees' Retirement Law, establishes the Public Employees' Retirement System and provides for administration of that law by the Board of Administration of the Public Employees' Retirement System. That law requires that a patrol member who retires for industrial disability receive a disability retirement allowance in a specified amount.*

This bill would require the board to convert a retired patrol member's disability retirement allowance to a service retirement allowance if, after becoming eligible for the maximum service retirement benefit, the patrol member retires on or after January 1, 2008, due to an industrial disability, and subsequently engages in gainful occupation as a peace officer, as specified.

(2) *Under the Public Employees' Retirement Law, if a recipient of a disability retirement allowance who is under the minimum age for voluntary retirement for service applicable to members of his or her*

class refuses to submit to a medical examination, the pension portions of his or her allowance may be discontinued until his or her withdrawal of the refusal, or canceled if the refusal continues for one year.

This bill would delete the provision allowing the cancellation of the pension portions if the refusal continues for one year. This bill would instead provide that if a recipient of a disability retirement allowance who has reached the minimum age for voluntary retirement for service applicable to members of his or her class, and who has been receiving a retirement allowance for less than 60 months, refuses to submit to a medical examination, the pension portions of his or her allowance may be discontinued until the withdrawal of the refusal.

(3) The Board of Administration of the Public Employees' Retirement System, or in the case of a local safety member, the governing body of the employer from whose employment the person was retired, as specified, may require any recipient of a disability retirement allowance under the minimum age for voluntary retirement for service applicable to members of his or her class to undergo medical examination, as specified.

This bill would provide that a recipient of a disability retirement who has reached the minimum age for voluntary retirement for service applicable to members of his or her class, and has been receiving a retirement allowance for less than 60 months, may be subject to that requirement. This bill would also prohibit the board or governing body from requiring the recipient who has reached the minimum age for voluntary retirement for service applicable to members of his or her class to undergo more than two medical examinations in a 36-month period.

(4) Existing law prohibits an insurer, or 3rd-party administrator retained by a self-insured employer to administer workers' compensation claims, and those employees and agents specified by a self-insured employer to administer workers' compensation claims, from disclosing or causing to be disclosed to an employer any medical information, as defined, about an employee who has filed a workers' compensation claim. Existing law provides an exception to that prohibition for (a) medical information limited to the diagnosis of the mental or physical condition for which workers' compensation is claimed and the treatment provided for this condition; and (b) medical information regarding the injury for which workers' compensation is claimed that is necessary for the employee to have in order for the employer to modify the employee's work duties.

This bill would provide an additional exception for medical information relating to an official workers' compensation insurance fraud investigation requested by workers' compensation investigators employed by the Department of the California Highway Patrol for the purposes of investigating workers' compensation fraud involving an employee of that department. The bill would require that this information be governed by the Workers' Compensation Insurance Fraud Reporting Act, remain confidential, and be used only for specified purposes.

(5) Existing law makes certain injured employees eligible for a supplemental job displacement benefit. Existing law provides that the employer shall not be liable for that benefit if, within 30 days of the termination of temporary disability indemnity benefits, the employer offers, and the employee rejects, or fails to accept, modified or alternative work, as specified.

This bill would additionally provide that an employer shall not be liable for that benefit if the employee is a peace officer, as defined, and is eligible for the maximum service retirement benefit, as specified.

(6) Existing law provides that records of the identity, diagnosis, prognosis, or treatment of a patient maintained by a health care facility that are not privileged records required to be secured by a certain special master procedure, or records required by law to be confidential, shall only be disclosed to law enforcement agencies under specified circumstances. Existing law provides that these provisions shall not apply to various types of investigations, including, but not limited to, investigations of insurance fraud performed by the Department of Insurance or the Department of the California Highway Patrol.

This bill would add investigations of workers' compensation insurance fraud performed by the Department of the California Highway Patrol and conducted by certain specified peace officers to the investigations exempted from the provisions regarding the disclosure of records.

~~Existing workers' compensation law requires employers to secure the payment of workers' compensation, including medical treatment, for injuries incurred by their employees that arise out of, or in the course of, employment. Existing law provides that if an employee who has been hired or is regularly employed in the state receives personal injury by accident arising out of, and in the course of, that employment outside of the state, he or she, or his or her dependents, shall be entitled to compensation according to the law of this state.~~

~~This bill would make technical, nonsubstantive changes to those provisions:~~

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~-no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 21175 of the Government Code is*
2 *amended to read:*

3 21175. (a) ~~If any~~ a recipient of a disability retirement
4 allowance under the minimum age for voluntary retirement for
5 service applicable to members of his or her class refuses to submit
6 to medical examination, the pension portions of his or her
7 allowance may be discontinued until his or her withdrawal of the
8 refusal. ~~If the refusal continues for one year his or her disability~~
9 ~~retirement allowance may be canceled.~~

10 (b) *If a recipient of a disability retirement allowance who has*
11 *reached the minimum age for voluntary retirement for service*
12 *applicable to members of his or her class, and who has been*
13 *receiving a disability retirement allowance for less than 60 months,*
14 *refuses to submit to a medical examination, the pension portions*
15 *of his or her allowance may be discontinued until his or her*
16 *withdrawal of the refusal.*

17 *SEC. 2. Section 21192 of the Government Code is amended to*
18 *read:*

19 21192. The board, or in *the* case of a local safety member, other
20 than a school safety member, the governing body of the employer
21 from whose employment the person was retired, may require ~~any~~
22 a recipient of a disability retirement allowance *who is* under the
23 minimum age for voluntary retirement for service applicable to
24 members of his or her class, *or who has reached the minimum age*
25 *for voluntary retirement for service applicable to members of his*
26 *or her class and has been receiving a retirement allowance for*
27 *less than 60 months,* to undergo medical examination, and upon
28 his or her application for reinstatement, shall cause a medical
29 examination to be made of the recipient who is at least six months
30 less than the age of compulsory retirement for service applicable
31 to members of the class or category in which it is proposed to
32 employ him or her. *The board or governing body shall not require*
33 *the recipient who has reached the minimum age for voluntary*
34 *retirement for service applicable to members of his or her class*
35 *to undergo more than two medical examinations in a 36-month*

1 *period.* The board, or in *the* case of a local safety member, other
2 than a school safety member, the governing body of the employer
3 from whose employment the person was retired, shall also cause
4 the examination to be made upon application for reinstatement to
5 the position held at retirement or any position in the same class,
6 of a person who was incapacitated for performance of duty in the
7 position at the time of a prior reinstatement to another position.
8 The examination shall be made by a physician or surgeon,
9 appointed by the board or the governing body of the employer, at
10 the place of residence of the recipient or other place mutually
11 agreed upon. Upon the basis of the examination, the board or the
12 governing body shall determine whether he or she is still
13 incapacitated, physically or mentally, for duty in the state agency,
14 the university, or contracting agency, where he or she was
15 employed and in the position held by him or her when retired for
16 disability, or in a position in the same classification, and for the
17 duties of the position with regard to which he or she has applied
18 for reinstatement from retirement.

19 *SEC. 3. Section 21431 is added to the Government Code, to*
20 *read:*

21 *21431. (a) If, after becoming eligible for the maximum service*
22 *retirement benefit under Section 21362, 21362.2, or 21362.3, a*
23 *patrol member retires due to an industrial disability and*
24 *subsequently engages in a gainful occupation as a peace officer,*
25 *but not in state service, the board shall convert the retired patrol*
26 *member's industrial disability retirement allowance to a service*
27 *retirement allowance. The conversion shall be effective on the first*
28 *day of the retired patrol member's employment as a peace officer.*

29 *(b) The recipient of a disability retirement allowance specified*
30 *in subdivision (a) shall furnish earnings information as requested*
31 *by the board to administer this section. If the recipient fails to*
32 *furnish the requested information, the disability retirement*
33 *allowance shall be discontinued until the requested information*
34 *is furnished. If the requested information is furnished, the industrial*
35 *disability retirement allowance shall be reinstated.*

36 *(c) For purposes of this section, "peace officer" means an*
37 *individual defined in Chapter 4.5 (commencing with Section 830)*
38 *of Title 3 of Part 2 of the Penal Code or an individual employed,*
39 *whether full time or less than full time, in another state in a position*
40 *similar to a position specified in that chapter.*

1 (d) *This section shall apply to a person who retires on or after*
2 *January 1, 2008.*

3 SEC. 4. *Section 3762 of the Labor Code is amended to read:*

4 3762. (a) Except as provided in subdivisions (b) and (c), the
5 insurer shall discuss all elements of the claim file that affect the
6 employer's premium with the employer, and shall supply copies
7 of the documents that affect the premium at the employer's expense
8 during reasonable business hours.

9 (b) The right provided by this section shall not extend to any
10 document that the insurer is prohibited from disclosing to the
11 employer under the attorney-client privilege, any other applicable
12 privilege, or statutory prohibition upon disclosure, or under Section
13 1877.4 of the Insurance Code.

14 (c) An insurer, third-party administrator retained by a
15 self-insured employer pursuant to Section 3702.1 to administer
16 the employer's workers' compensation claims, and those employees
17 and agents specified by a self-insured employer to administer the
18 employer's workers' compensation claims, are prohibited from
19 disclosing or causing to be disclosed to an employer, any medical
20 information, as defined in subdivision (b) of Section 56.05 of the
21 Civil Code, about an employee who has filed a workers'
22 compensation claim, except as follows:

23 (1) Medical information limited to the diagnosis of the mental
24 or physical condition for which workers' compensation is claimed
25 and the treatment provided for this condition.

26 (2) Medical information regarding the injury for which workers'
27 compensation is claimed that is necessary for the employer to have
28 in order for the employer to modify the employee's work duties.

29 (3) *Medical information relating to an official workers'*
30 *compensation insurance fraud investigation requested by workers'*
31 *compensation investigators employed by the Department of the*
32 *California Highway Patrol for the purpose of investigating*
33 *workers' compensation fraud involving an employee of that*
34 *department. This medical information shall be governed by the*
35 *Workers' Compensation Insurance Fraud Reporting Act (Article*
36 *7 (commencing with Section 1877) of Chapter 12 of Part 2 of*
37 *Division 1 of the Insurance Code), shall remain confidential, and*
38 *shall be used only for the purpose of investigating, prosecuting,*
39 *or preventing workers' compensation insurance fraud.*

40 SEC. 5. *Section 4658.6 of the Labor Code is amended to read:*

1 4658.6. The employer shall not be liable for the supplemental
2 job displacement benefit if ~~the employer meets either one of the~~
3 following conditions *applies*:

4 (a) Within 30 days of the termination of temporary disability
5 indemnity payments, the employer offers, and the employee rejects,
6 or fails to accept, in the form and manner prescribed by the
7 administrative director, modified work, accommodating the
8 employee's work restrictions, lasting at least 12 months.

9 (b) Within 30 days of the termination of temporary disability
10 indemnity payments, the employer offers, and the employee rejects,
11 or fails to accept, in the form and manner prescribed by the
12 administrative director, alternative work meeting all of the
13 following conditions:

14 (1) The employee has the ability to perform the essential
15 functions of the job provided.

16 (2) The job provided is in a regular position lasting at least 12
17 months.

18 (3) The job provided offers wages and compensation that are
19 within 15 percent of those paid to the employee at the time of
20 injury.

21 (4) The job is located within reasonable commuting distance of
22 the employee's residence at the time of injury.

23 (c) *The employee is a peace officer, as defined in subdivision*
24 *(a) of Section 830.2 of the Penal Code, and is eligible for the*
25 *maximum service retirement benefit under Section 21362, 21362.2,*
26 *or 21362.3 of the Government Code.*

27 *SEC. 6. Section 1543 of the Penal Code is amended to read:*

28 1543. (a) Records of the identity, diagnosis, prognosis, or
29 treatment of ~~any~~ a patient maintained by a health care facility
30 ~~which~~ *that* are not privileged records required to be secured by the
31 special master procedure in Section 1524, or records required by
32 law to be confidential, shall only be disclosed to law enforcement
33 agencies pursuant to this section:

34 (1) In accordance with the prior written consent of the patient;
35 or

36 (2) If authorized by an appropriate order of a court of competent
37 jurisdiction in the county where the records are located, granted
38 after application showing good cause therefor. In assessing good
39 cause, the court:

1 (A) Shall weigh the public interest and the need for disclosure
2 against the injury to the patient, to the physician-patient
3 relationship, and to the treatment services;

4 (B) Shall determine that there is a reasonable likelihood that
5 the records in question will disclose material information or
6 evidence of substantial value in connection with the investigation
7 or prosecution; or

8 (3) By a search warrant obtained pursuant to Section 1524.

9 (b) The prohibitions of this section continue to apply to records
10 concerning ~~any~~ *an* individual who has been a patient, irrespective
11 of whether or when he or she ceases to be a patient.

12 (c) Except where an extraordinary order under Section 1544 is
13 granted or a search warrant is obtained pursuant to Section 1524,
14 ~~any~~ *a* health care facility whose records are sought under this
15 chapter shall be notified of the application and afforded an
16 opportunity to appear and be heard thereon.

17 (d) Both disclosure and dissemination of any information from
18 the records shall be limited under the terms of the order to assure
19 that no information will be unnecessarily disclosed and that
20 dissemination will be no wider than necessary.

21 ~~This chapter shall not apply to investigations of fraud in the~~
22 ~~provision or receipt of Medi-Cal benefits, investigations of~~
23 ~~insurance fraud performed by the Department of Insurance or the~~
24 ~~California Highway Patrol, investigations of workers'~~
25 ~~compensation insurance fraud performed by the Department of~~
26 ~~Corrections and conducted by peace officers specified in paragraph~~
27 ~~(2) of subdivision (d) of Section 830.2, and investigations and~~
28 ~~research regarding occupational health and safety performed by~~
29 ~~or under agreement with the Department of Industrial Relations.~~
30 ~~Access to medical records in these investigations shall be governed~~
31 ~~by all laws in effect at the time access is sought.~~

32 (e) *This chapter shall not apply to any of the following:*

33 (1) *An investigation of fraud in the provision or receipt of*
34 *Medi-Cal benefits.*

35 (2) *An investigation of insurance fraud performed by the*
36 *Department of Insurance or the Department of the California*
37 *Highway Patrol.*

38 (3) *An investigation of workers' compensation insurance fraud*
39 *performed by the Department of Corrections and Rehabilitation*

1 *and conducted by peace officers specified in paragraph (2) of*
2 *subdivision (d) of Section 830.2.*

3 *(4) An investigation of workers' compensation insurance fraud*
4 *performed by the Department of the California Highway Patrol*
5 *and conducted by peace officers specified in subdivision (a) of*
6 *Section 830.2, subject to the limitations specified in Section 1877.3*
7 *of the Insurance Code.*

8 *(5) An investigation and any research regarding occupational*
9 *health and safety performed by or under agreement with the*
10 *Department of Industrial Relations.*

11 *(f) Access to medical records in the investigations specified in*
12 *subdivision (e) shall be governed by all laws in effect at the time*
13 *the access is sought.*

14 ~~(e)~~

15 *(g) Nothing in this chapter shall prohibit disclosure by a medical*
16 *facility or medical provider of information contained in medical*
17 *records—where if disclosure to specific agencies is mandated by*
18 *statutes or regulations.*

19 ~~(f)~~

20 *(h) This chapter shall not be construed to authorize disclosure*
21 *of privileged records to law enforcement agencies by the procedure*
22 *set forth in this chapter, where if the privileged records are required*
23 *to be secured by the special master procedure set forth in*
24 *subdivision (c) of Section 1524 or required by law to be*
25 *confidential.*

26 ~~SECTION 1. Section 3600.5 of the Labor Code is amended to~~
27 ~~read:~~

28 ~~3600.5. (a) If an employee who has been hired or is regularly~~
29 ~~employed in the state receives personal injury by accident arising~~
30 ~~out of, and in the course of, that employment outside of this state,~~
31 ~~he or she, or his or her dependents, in the case of his or her death,~~
32 ~~shall be entitled to compensation according to the law of this state.~~

33 ~~(b) (1) Any employee who has been hired outside of this state~~
34 ~~and his or her employer shall be exempt from the provisions of~~
35 ~~this division while that employee is temporarily within this state~~
36 ~~doing work for his or her employer if that employer has furnished~~
37 ~~workers' compensation insurance coverage under the workers'~~
38 ~~compensation insurance or similar laws of a state other than~~
39 ~~California, so as to cover the employee's employment while in~~
40 ~~this state; provided, the extraterritorial provisions of this division~~

1 ~~are recognized in that other state and provided employers and~~
2 ~~employees who are covered in this state are likewise exempted~~
3 ~~from the application of the workers' compensation insurance or~~
4 ~~similar laws of that other state. The benefits under the Workers'~~
5 ~~Compensation Insurance Act or similar laws of that other state, or~~
6 ~~other remedies under that act or those laws, shall be the exclusive~~
7 ~~remedy against that employer for any injury, whether resulting in~~
8 ~~death or not, received by that employee while working for the~~
9 ~~employer in this state.~~
10 (2) ~~A certificate from the duly authorized officer of the appeals~~
11 ~~board or similar department of another state certifying that the~~
12 ~~employer of that other state is insured therein and has provided~~
13 ~~extraterritorial coverage insuring his or her employees while~~
14 ~~working within this state shall be prima facie evidence that that~~
15 ~~employer carries workers' compensation insurance.~~